

**Comments Concerning Tentative Order No. R9-2002-0385
Administrative Civil Liability With Mandatory Minimum Penalties for
Violations of Order No. 2001-96, NPDES Permit No. CAG919002
Mission Valley Terminal Treatment System
San Diego, California
November 27, 2002**

**to
California Regional Water Quality Control Board, San Diego Region**

**by
*Kinder Morgan Energy Partners, L.P.***

These comments are provided in response to Complaint No. R9-2002-0205 and Tentative Order No. R9-2002-0385, Administrative Civil Liability With Mandatory Minimum Penalties Against Kinder Morgan Energy Partners, L.P. – SFPP, L.P. Mission Valley Terminal Treatment System, San Diego, California.

Tentative Order No. R9-2002-0385 has been proposed by the regional board staff for violation of treatment system effluent limits established by Order No. 2001-96, NPDES No. CAG919002, *General Waste Discharge Requirements For Groundwater Extraction and Similar Waste Discharges From Construction, Remediation, And Permanent Groundwater Extraction Projects To Surface Waters Within The San Diego Region Except For San Diego Bay.*

These comments provide a summary of the actions being pursued in response to the violations, the requested Regional Board actions, and other background information.

Allegations

Complaint No. R9-2002-0205, dated October 24, 2002, alleges that during the period of January 2002 through June 2002 Kinder Morgan Energy Partners violated Order No. 2001-96, NPDES No. CAG919002, *General Waste Discharge Requirements For Groundwater Extraction and Similar Waste Discharges From Construction, Remediation, And Permanent Groundwater Extraction Projects To Surface Waters Within The San Diego Region Except For San Diego Bay.* The complaint states that these violations are due to effluent limit exceedances of total phosphorus, acute toxicity (C. dubia and P. promelas), chronic toxicity (C. dubia, P. promelas and S. capricornutum) and manganese as reported in the Discharger Self-Monitoring Reports during this time period. The complaint further summarizes the individual violations as follows:

Table 1
Violation Summary for Kinder Morgan Energy Partners
Mission Valley Terminal Wastewater Treatment System
January 2002 through June 2002

Date of Violation	Violation	Type of Violation	Penalty
March 18-22, 2002	Chronic Toxicity – daily max.	Chronic	–
March 31, 2002	Total Phosphorus daily max.	Chronic	–
March 31, 2002	Total Phosphorus Average Monthly	Serious	\$3,000
March 6-10, 2002	Chronic Toxicity – daily max.	Chronic	\$3,000
March 6-10, 2002	Acute Toxicity – Instantaneous max.	Chronic	\$3,000
May 20-24, 2002	Chronic Toxicity – daily max.	Chronic	\$3,000
June 3-7, 2002	Chronic Toxicity – daily max.	Chronic	\$3,000
June 11, 2002	Manganese – Non-municipal/Non-potable Instantaneous max.	Serious	\$3,000
June 24-28, 2002	Chronic Toxicity – daily max.	Chronic	\$3,000
		Total:	\$21,000

The Chronic violations of March 18-22, 2002 and March 31, 2002 do not incur a penalty of \$3,000 because there are not three or more violations in the preceding 180-day period.

Investigative and Corrective Actions

Upon receipt of the toxicity test results for the March 18 – 22, 2002 study dates, arrangements were immediately made with the toxicology laboratory to increase the frequency of the toxicity testing to at least two times per month as specified by Section G, Provision 36 of Order No. 2001-96, NPDES No. CAG919002, which contains the following requirements regarding toxicity violations:

“No later than six months after authorization to discharge under this Order, all permanent groundwater extraction waste discharge enrollees shall develop a Toxicity Reduction Evaluation (TRE) workplan in accordance with the USEPA’s Toxicity Reduction Procedures: Phases 1, 2, and 3, (USEPA document Nos. USEPA 600/3-88/034, 600/3-88/035 and 600/3-88/036, respectively), and TRE Protocol for Municipal Wastewater Treatment Plants (USEPA 6000/2-88/602). The TRE workplan shall be subject to the approval of the Regional Board and shall be modified as directed by the Regional Board. All Enrollees shall submit the TRE workplan to the Regional Board upon completion.”

“If toxicity testing results show a violation of any acute or chronic toxicity limitation identified in Discharge Specification B.1, B.2, B.3, or B.4 of this Order, The Enrollee shall:

- a. Take all reasonable measures necessary to immediately minimize toxicity; and

- b. Increase the frequency of the toxicity test(s) which showed a violation to at least two times per month until the results of at least two consecutive toxicity tests do not show violations."

"If the Regional Board determines that toxicity testing shows consistent violation of any acute or chronic toxicity limitation identified in Discharge Specification B.1, B.2, B.3, or B.4 of this Order, the Enrollee shall conduct a TRE which includes all reasonable steps to identify the source of toxicity. Once the source of toxicity is identified, the Enrollee shall take all reasonable steps to reduce the toxicity to meet the toxicity limitations identified in Discharge Specifications B.1, B.2, B.3, or B.4 of this Order."

"Within fourteen days of completion of the TRE, the Enrollee shall submit the results of the TRE, including a summary of the findings, data generated, a list of corrective actions necessary to achieve consistent compliance with all the toxicity limitations of this Order and prevent recurrence of violations of those limitations, and a time schedule for implementation of such corrective actions. The corrective actions and time schedule shall be modified at the direction of the Executive Officer."

As noted above, the frequency of the toxicity tests were increased to two times per month upon receipt of the toxicity test results for the March 18-22, 2002 study dates. Test results from the increased toxicity testing schedule were subsequently monitored in an effort to determine whether the violations developed a pattern of consistency or were isolated and random. Once it was determined that the chronic toxicity violations appeared to be consistent in nature, arrangements were made with the testing laboratory to perform a Toxicity Identification Evaluation (TIE) in an effort to identify the source of the toxicity. Kinder Morgan voluntarily initiated the TIE process without waiting for the Regional Board staff to first determine that the toxicity test results showed consistent violations of the applicable toxicity limitations identified in Discharge Specification B.4 of Order No. 2001-96.

The TIE is an iterative process that can typically require anywhere from two to six months to complete as the toxicity testing laboratory systematically works to eliminate potential causes of the toxicity until it ultimately identifies either a specific source of the toxicity or smaller groups of potential sources that may share similar chemical and toxicity characteristics. It is currently anticipated that the TIE process will be completed in January or February 2003. Upon identification of the source of the toxicity, a list of corrective actions necessary to achieve consistent compliance with the applicable toxicity limitations and prevent recurrence of violations of those limitations will be developed along with a time schedule for implementation. Appropriate corrective actions cannot be developed without first determining the cause of the toxicity.

LFR Levine-Fricke (LFR) met with RWQCB staff on behalf of Kinder Morgan Energy Partners on October 31, 2002 to discuss the violations and the actions being taken to resolve this matter. The objective of the meeting was to update the RWQCB staff on the

actions being taken to resolve the toxicity issue and to obtain the opinion of RWQCB staff regarding the appropriateness of those actions. RWQCB staff concurred that:

1. The Mission Valley Terminal groundwater extraction and treatment system was not considered to be "permanent" and was therefore not required to develop an official TRE workplan, and
2. All appropriate and reasonable actions were being taken to resolve the matter and that those actions were being pursued in an acceptable and timely manner.

However, the RWQCB staff stated that the assessment of mandatory minimum penalties for violation of effluent limits was mandated by law, and that staff was not authorized to exercise any discretion in the assessment of the minimum penalties. RWQCB staff then stated that the Regional Board did possess the authority to exercise discretion in deciding whether to reduce or rescind the mandatory minimum penalties issued by the staff, and encouraged Kinder Morgan to present its case to the Regional Board for their consideration.

Additionally, Chapter 3, Section A, Paragraph (e) of the State Water Resources Control Board's, Water Quality Enforcement Policy (dated February 19, 2002) states that:

"Violations of receiving water limits will not be considered priority violations if: the NPDES permit contains requirements for responding to receiving water violations by investigating the cause of the violation; the facility is in compliance with those requirements; and the facility takes necessary action to ensure that its effluent does not cause or contribute to future violations of receiving water limits."

Historically, the treatment system has been used to treat both remediation water and a much smaller volume of Terminal process water. Although the violations do not correlate with process water discharges (see attached Tables 2 and 3 and Figure 1), the process water has been disconnected from the system. The last process water discharged through the treatment system was on September 24, 2002.

Request Regional Board Actions

In regard to the information summarized above, Kinder Morgan respectfully requests that the Regional Board consider the following options with respect to Tentative Order No. R9-2002-0385:

1. Rescind or reduce all of the mandatory minimum penalties presented in Complaint No. R9-2002-0205 based on the following circumstances:
 - a. Upon learning of the initial toxicity violations in March 2002, the discharger has been proceeding in a "good-faith effort" in pursuing the

prescribed investigative and corrective actions specified in Order No. 2001-96 – including the voluntary initiation of the TIE process,

- b. As specified by Chapter 3, Section A, Paragraph (e) of the State Water Resources Control Board's, Water Quality Enforcement Policy, the violations should not be considered priority since the NPDES permit contains requirements for responding to receiving water violations by investigating the cause of the violation,
 - c. RWQCB staff concur that the facility is in compliance with the response requirements contained in the NPDES permit, and
 - d. That upon determining the cause of the violations, the facility will take necessary action to ensure that its effluent does not cause or contribute to future violations of receiving water limits.
2. Rescind or reduce the mandatory minimum penalties presented in Complaint No. R9-2002-0205 which are a result of violations reported because of the increased frequency of toxicity testing. While the objective of the increased toxicity testing prescribed by Order No. 2001-96 appears to be intended to provide additional toxicity monitoring and evaluation data, it also results in a dramatic increase in the number of violations that are reported and the subsequent penalties issued as a result of the increased number of violations (i.e. there are more violations simply because there is more testing [twice per month instead of once per quarter]).
3. Defer all of the mandatory minimum penalties presented in Complaint No. R9-2002-0205 for eventual waiving or reduction provided that the discharger continues to pursue a "good-faith effort" to achieve consistent compliance with Order No. 2001-96.

Kinder Morgan will continue to work closely and cooperatively with the Regional Board staff to address the effluent limit violations at the Mission Valley Terminal. Kinder Morgan would like to thank the Regional Board for considering these comments.

Background

The Mission Valley Terminal (the Terminal) is located at 9950 and 9966 San Diego Mission Road in San Diego California. The Terminal includes bulk fuel storage tanks, pipeline transport facilities, and truck loading racks. Stored fuel is loaded onto trucks for delivery to local retail fuel stations. An outbound pipeline connected at the terminal also conveys fuel to the San Diego Harbor.

The Terminal property is owned by Kinder Morgan Energy Partners, L.P. (Kinder Morgan), through its operating partnership SFPP, L.P. (SFPP). Current or past lessees/operators at the property have included SFPP, Mobil Oil Corporation (Mobil),

Powerine Oil Corporation (Powerine), Shell Oil Company (Shell), Texaco Refining and Marketing, Inc. (Texaco), and Buck Petroleum Company (Buck).

In 1992, the San Diego Regional Water Quality Control Board issued Cleanup and Abatement Order 92-01 (CAO 92-01) to SFPP, Shell, Mobil, Buck and Powerine. Texaco (also known as Equilon) was added to the CAO 92-01 on August 27th 1999.

Shell Oil Products US operates all Shell and Texaco assets at the Terminal. Shell Oil Products US and Kinder Morgan are the only current active operators.

The responsible parties completed comprehensive site assessment activities and submitted a Corrective Action Plan in September 1992. The Corrective Action Plan and prior submittals documented that a portion of the shallow groundwater in the Mission San Diego Hydrologic Subarea was impacted by hydrocarbons. A remediation system consisting of seven combined groundwater and soil vapor extraction wells was installed in accordance with the Corrective Action Plan. Based on available data, free phase gasoline in the subsurface has reached residual saturation and is no longer mobile in the environment.

The groundwater extraction system is currently being modified in response to a recently completed performance evaluation of the existing system. These modifications include replacing one of the existing groundwater and soil vapor extraction wells and installation of two additional groundwater extraction wells. The modified groundwater extraction system is expected to be in operation prior to December 31, 2002.

Extracted groundwater is treated via an oil/water separator, physical filtration of suspended solids through polypropylene media filter cartridges, filtration of petroleum hydrocarbons and other organic constituents through granular activated carbon, and aeration to increase dissolved oxygen levels prior to discharge to Murphy Canyon Creek. Approximately 170,000 gallons of treated water is discharged per day from this facility.

Additionally, construction activities related to proposed modifications and expansion of the existing soil vapor extraction system are scheduled to begin during December 2002 and are expected to be completed in April 2003. These construction activities will be temporarily interrupted throughout the entire month of January 2003 and the first week of February 2003 as a result of Qualcomm Stadium serving as the host location for the National Football League's Superbowl XXXVII, scheduled for January 26, 2003. Construction activities will be interrupted again from February 25, 2003 through March 3, 2003 due to an automotive sales event to be held in the Qualcomm Stadium parking lot during this time period.

Day	March 2002		April 2002		May 2002		June 2002		July 2002		August 2002		September 2002		October 2002	
	Groundwater	Terminal Water	Groundwater	Terminal Water	Groundwater	Terminal Water	Groundwater	Terminal Water	Groundwater	Terminal Water	Groundwater	Terminal Water	Groundwater	Terminal Water	Groundwater	Terminal Water
1	190,960	0	179,080	0	203,290	0	188,290	0	180,050	0	84,900	0	165,000	0	219,430	0
2	188,730	0	187,410	0	179,420	0	186,690	0	141,210	910	185,730	0	133,010	0	171,850	0
3	39,880	0	194,070	0	159,190	0	161,920	0	181,970	0	177,050	990	173,010	0	207,380	0
4	143,130	0	171,800	0	172,400	0	194,130	0	170,320	0	177,870	0	165,370	0	192,490	0
5	188,210	540	181,490	0	174,790	0	155,700	0	168,360	0	170,260	0	168,110	0	162,270	0
6	179,410	920	174,340	0	165,480	0	184,840	0	91,580	0	182,700	0	163,410	0	200,560	0
7	117,550	0	186,480	0	162,850	0	173,550	0	0	0	165,800	0	163,910	0	200,440	0
8	172,640	0	171,150	900	129,910	0	159,430	0	0	0	176,530	0	156,940	0	196,700	0
9	186,490	0	185,320	0	184,990	0	170,470	0	53,800	0	16,960	0	164,840	0	143,420	0
10	184,550	0	166,750	0	186,000	0	166,530	0	54,020	0	0	0	165,300	0	156,710	0
11	165,050	1,270	171,520	0	157,550	0	140,380	0	110,420	0	54,890	0	152,260	0	195,330	0
12	197,390	230	190,130	0	177,400	0	166,710	0	180,650	0	82,550	0	152,190	0	204,590	0
13	182,530	0	183,560	0	146,810	0	177,330	0	173,020	0	53,650	50	148,060	0	198,710	0
14	175,710	0	158,630	0	174,300	0	159,260	0	170,150	0	113,070	0	158,500	0	192,570	0
15	193,700	0	161,390	0	184,240	0	183,440	0	90,760	0	165,010	0	162,130	0	205,620	0
16	189,240	0	152,190	0	167,950	0	167,500	0	0	0	163,740	0	30,210	0	181,650	0
17	153,910	0	171,910	0	144,350	0	171,500	0	131,150	0	164,290	0	0	0	198,580	0
18	135,220	0	184,420	0	168,830	0	178,240	50	187,510	0	150,690	0	165,360	0	185,170	0
19	155,960	0	174,570	20	176,930	0	164,440	0	186,780	0	148,610	0	240,060	0	189,770	0
20	129,770	0	185,190	0	186,360	0	162,490	0	190,640	0	139,960	1,640	191,870	0	195,550	0
21	185,770	690	158,140	0	132,710	0	180,350	0	177,790	0	140,320	0	206,670	0	188,750	0
22	187,760	0	173,010	10	188,260	0	165,160	0	177,610	0	164,930	0	180,200	0	192,270	0
23	183,690	0	169,120	0	173,360	0	186,510	0	28,210	0	166,120	0	182,820	0	138,310	0
24	188,970	0	161,280	0	170,010	0	168,010	0	0	0	165,910	0	198,600	10	192,580	0
25	196,870	0	163,090	0	197,800	0	165,270	0	0	0	167,670	0	230,190	0	215,450	0
26	188,690	0	186,410	0	178,020	0	181,380	0	0	0	160,200	0	136,920	0	190,880	0
27	199,780	0	182,830	0	166,970	20	172,430	0	0	0	138,780	0	160,640	0	192,690	0
28	181,560	0	188,660	0	171,230	0	176,020	0	0	0	165,330	0	162,070	0	193,310	0
29	171,940	0	168,160	0	163,490	0	177,200	0	54,810	0	162,620	0	169,360	0	143,100	0
30	183,030	0	165,030	0	202,850	0	167,860	0	81,250	0	158,110	0	201,470	0	192,970	0
31	183,850	0	0	0	153,380	0	0	0	53,630	0	150,150	0	0	0	194,290	0
Totals:	5,312,640	6,200	5,248,130	930	5,281,020	20	5,133,030	50	3,035,690	1,810	4,314,200	2,680	4,858,480	10	5,843,390	0

█ = dates of effluent sample collection for toxicity testing.